

Attachment 1

Agreement for Services of Independent Contractor

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THE AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR DATED JULY 1, 2021 (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Smartsheet Inc. with an address at 10500 NE 8th St. Suite 1300, Bellevue, WA, 98004 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Andre Monostori at phone number 805-568-2606 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. CONTRACTOR shall assign an Authorized Representative following execution of this Agreement. Any changes in designated representatives shall be made only after advance written notice to the other party if possible, or as soon as practicable following reassignment.

2. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with the Smartsheet Services Agreement dated July 1, 2020 ("Services Agreement") and the applicable Order or SOW attached hereto as EXHIBIT A and incorporated herein by reference.

3. TERM

CONTRACTOR shall commence performance corresponding to an applicable Order or SOW in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

5. **DEBARMENT AND SUSPENSION**

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

6. **TAXES**

Other than income taxes imposed on CONTRACTOR, COUNTY will bear all taxes, duties, VAT, and all other governmental charges (collectively, "Taxes") resulting from this Agreement. If COUNTY is exempt from any applicable Taxes, COUNTY will provide evidence reasonably satisfactory to CONTRACTOR of COUNTY's tax-exempt status and, after receipt of such evidence, CONTRACTOR will not charge COUNTY any Taxes from which it is exempt. If it is determined that payments due under this Agreement are subject to withholding Taxes, COUNTY shall notify CONTRACTOR prior to deducting any such Taxes. COUNTY shall: (a) only withhold amounts required under law; (b) make timely payment to the proper taxing authority of such withheld amount; and (c) provide CONTRACTOR with proof of such payment within thirty (30) days following that payment. COUNTY shall not be responsible for paying any Taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid Taxes plus interest and penalty, if any. These Taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

7. **CONFLICT OF INTEREST**

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

8. **NO PUBLICITY OR ENDORSEMENT**

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

9. **RECORDS, AUDIT, AND REVIEW**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records in accordance with this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. Upon request to be made no more than once annually, COUNTY shall have the right at its sole expense to audit and review all such documents and records relating to fees paid by COUNTY under this Agreement at any time during CONTRACTOR's regular business hours or upon reasonable notice. Any such audit and/or review shall be performed in a manner designed to result in minimal impact on CONTRACTOR'S business and operations, and all results of any such audit shall be deemed to be Confidential Information of CONTRACTOR. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7).

10. INDEMNIFICATION AND INSURANCE

CONTRACTOR agrees to provide evidence of the following insurance coverage through commercial insurance, self-insurance or a combination thereof with limits no less than described below:

General Liability with policy limits no less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate.

Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Professional Liability, or applicable Errors and Omissions policy, with policy limits no less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate.

Cyber Liability Insurance: Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

The Certificate Holder shall read as follows:

- County of Santa Barbara
- C/O General Services Department
- 105 East Anapamu Street
- Santa Barbara, CA 93101

11. NONDISCRIMINATION

CONTRACTOR provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability, genetics, or other legally protected classes of persons in compliance with all applicable federal and state laws governing nondiscrimination in employment. If complaint is made that seller is engaging in discriminatory employment practices in violation of this Section 11, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this Agreement and any applicable Order in accordance with Section 7.3 of the Services Agreement.

12. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

13. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

14. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to the parties is intended to be exclusive of any other remedy or remedies, and except as otherwise provided herein or in EXHIBIT A, each and every such remedy, to the extent

permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise

16. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

17. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means.

18. COMPLIANCE WITH LAW

CONTRACTOR represents and warrants that it has the necessary authority to enter into this Agreement and that CONTRACTOR shall comply with any United States laws, statutes, and regulations to the extent such laws, statutes and regulations apply to CONTRACTOR's provision of the Services (as defined in EXHIBIT A) under this Agreement. For the avoidance of doubt, CONTRACTOR shall not be responsible for COUNTY's compliance with any laws, statutes and regulations applicable to COUNTY and its industry.

19. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California.

20. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

21. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

22. PRECEDENCE

Only in the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibit A, then the provisions of this agreement shall prevail.

23. BUSINESS ASSOCIATE

The parties agree to the terms and conditions set forth in EXHIBIT D - HIPAA Business Associate Agreement (BAA), attached hereto and incorporated herein by reference.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and Smartsheet Inc.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Department of General Services

CONTRACTOR:

Smartsheet Inc.

DocuSigned by:
Janette Pell
By: _____
1FBA0BD673A445F...
Director

DocuSigned by:
Andrew Bennett
By: _____
B18356E2919A46C...
Authorized Representative
Name: Andrew Bennett
Title: SVP of Commercial Sales

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

DocuSigned by:
[Signature]
By: _____
D0A627A89DD64A5...
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

DocuSigned by:
[Signature]
By: _____
B9D7C9FF7A414AE...
Deputy

APPROVED AS TO FORM:

Risk Management

DocuSigned by:
Ray Aramatorio
By: _____
D3DB8526E16F47E...
Risk Management

APPROVED AS TO FORM

Procurement

DocuSigned by:
Phung Loman
By: _____
5995E83913B84A5...
Procurement



Order Q-926555

Customer Contact Information

	Contact Name	Email	Phone
Contract Owner	Andre Monostori	amonostori@countyofsb.org	(805) 568-2606
Accounts Payable	Heather Bowling	habowling@countyofsb.org	(805) 568-2625
Services Contact	Mark Garcia	mkgarcia@countyofsb.org	(510) 375-9394

Customer Address Information

	Ship To	Bill To
Street	105 E Anapamu Street GS RM 108	105 E Anapamu Street GS RM 108
City	Santa Barbara	Santa Barbara
State	CA	CA
Zip	93101	93101
Country	US	US

Subscription Details

Organization Name	County of Santa Barbara/ICT CISO
Payment Terms	Net 30
Order Execution Date	7/1/2021
Subscription Action	Renewal in Accordance with the Existing Terms
System Administrator Email	jmlinek@co.santa-barbara.ca.us
Purchase Order Does your organization require a PO to process payment? Yes	PO Number CN24268

Product	Annual / Unit Price	Unit Quantity	Extended Price	Billing Frequency	Subscription Term	Total Price
Enterprise Plan plus Pro Support - Licensed Users	465.00	191	88,815.00	Annual	7/1/2021 to 6/30/2022 (12 Months)	88,815.00 USD
Smartsheet Advance – Platinum (equal to or < 999 Connected Users)	147,185.00	1	147,185.00	Annual	7/1/2021 to 6/30/2022 (12 Months)	147,185.00 USD
Launch 10 Package (Expires after 60 days)	2,000.00	1	2,000.00	One-Time	-	2,000.00 USD
Enterprise Plan plus Pro Support - Licensed Users	465.00	8	3,720.00	Annual	7/1/2021 to 6/30/2022 (12 Months)	3,720.00 USD

Total	241,720.00 USD
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Smartsheet will provision Subscription Services and issue an invoice for amounts due promptly after receipt of an executed Order. Subscription Term may be adjusted based on the actual provision date of the Subscription Service, which will be specified in your invoice with any corresponding prorated amounts due. This Order and any renewals are governed by, and hereby incorporate by reference, that certain agreement governing your company's use of the Smartsheet services effective as of 7/10/2020 ("Negotiated Agreement"). By submitting this Order, you are entering into an agreement on behalf of your company for the provision of services by Smartsheet. Accordingly, you represent and warrant that you have the necessary authority to (i) submit this Order, (ii) agree to the Negotiated Agreement, and (iii) designate the SysAdmin indicated above.

LICENSED USERS: For the next consecutive, uninterrupted, annual renewal of this Order ("First Renewal Term") Smartsheet will not increase the per Licensed User price of "Enterprise Plan plus Pro Support - Licensed Users" specified in this Order, provided that the total number of Licensed Users renewed is equal to or greater than the amount set forth in this Order.

Upon expiration of the First Renewal Term, for the next consecutive, uninterrupted, annual renewal of this Order ("Second Renewal Term"), Smartsheet will not increase the per Licensed User price of "Enterprise Plan plus Pro Support - Licensed Users" by more than five percent (5%) over the Licensed User price charged for the First Renewal Term; provided that the total number of Licensed Users renewed is equal to or greater than the amount set forth in this Order.

This limitation will not apply to price increases that result from (i) changes to Customer's subscription plan type, or (ii) Customer's purchase of additional products or services.

PRODUCT TERMS: Smartsheet Advance - Platinum

Smartsheet Advance - Platinum includes access to Smartsheet's subscription-based online work collaboration service and the following components listed below (collectively, the "Platform"):

- Connector - Data Shuttle
- Connector - JIRA
- Connector - Salesforce
- Connector - MSFT Dynamics 365
- Connector - Bridge
- Control Center
- Application - Calendar App
- Application - Data Mesh
- Application - Dynamic View
- Application - Pivot App
- Application - WorkApps Collaborators
- Administration/Security - Event Reporting



Customer is responsible for maintaining the number of individuals authorized or invited by Customer or a Licensed User to access and use the Platform during the Subscription Term ("Connected Users") in accordance with the limitations set forth in this Order and the Agreement. If Customer needs additional Connected Users in excess of the authorized limit purchased under this Order, Customer may contact Smartsheet to determine the number of Connected Users that accounts for Customer's anticipated usage, and Smartsheet will provide pricing for such usage. During the initial Subscription Term, and the First Renewal Term and Second Renewal Term (in each case subject to the price increase language set forth below), Customer may purchase access for: (i) Connected User quantity band 1,000 - 2,499 for an additional annual fee of \$25,000, prorated for the remainder of the applicable Subscription Term; and (ii) Connected User quantity band 2,500 - 4,999 for an additional annual fee of \$50,000, prorated for the remainder of the applicable Subscription Term. For the avoidance of doubt, the fees in the foregoing sentence are in addition to the fees for Connected Users in the preceding quantity bands and a table illustrating the band and total pricing has been included below. If Customer requires Connected User access in excess of 4,999 Connected Users, then Smartsheet will provide applicable pricing for such level of access.

For clarity: (a) the number of Licensed Users purchased in conjunction with the Platform counts toward the limit of Connected Users; and (b) all Connected Users have access, view, and edit capabilities within the Platform, however, only Licensed Users control access to and can create within the components of the Platform.

Product: Smartsheet Advance - Platinum		
Initial Subscription Term Connected User Annual Volume Pricing Bands		
Connected User Unit Quantity Band	Annual Subscription Price for Band of Connected Users (USD)	Annual Total Price for Connected Users (USD)
1 - 999	\$147,185.00	\$147,185.00
1,000 - 2,499	\$25,000	\$172,185.00
2,500 - 4,999	\$50,000	\$222,185.00
5,000+	TBD	TBD



Smartsheet may increase the Annual Subscription Price for Band of Connected Users as set forth in the table above provided that no such increase may exceed 5% over the previous twelve (12) months for each of the First Renewal Term and Second Renewal Term. This limitation will not apply to price increases that result from (i) changes to Customer's subscription plan type, or (ii) Customer's purchase of additional products or services.

ACCEPTED AND AGREED:

SMARTSHEET INC.

By: 
DocuSigned by:
4DBB1A600F84456...

Name: Andrew Bennett

Title: SVP of Commercial Sales and Demand Generation

Date: 6/23/2021

County of Santa Barbara/ICT
CISO

By: 
DocuSigned by:
11BAD7D923845F...

Name: Andre Monostori

Title: Interim Assistant Director - ICT

Date: 6/23/2021



Amendment to Services Agreement

This Amendment (“**Amendment**”) is effective as of the date of last signature below and amends the Services Agreement made by and between Smartsheet Inc. (“**Smartsheet**”) and County of Santa Barbara (“**Customer**”) dated July 10, 2020 (“**Agreement**”). All capitalized terms not defined herein shall have the meanings set forth in the Agreement.

The parties hereby agree as follows:

1. **Section 10.1 – Limitations of Liability.** The following clause shall be added to Section 10.1 of the Agreement, immediately following the final sentence:

“FURTHER, NOTWITHSTANDING THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION 10, SMARTSHEET’S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY NATURE ARISING FROM SMARTSHEET’S BREACH OF SECTION 3.1 (SECURITY) RESULTING IN UNAUTHORIZED ACCESS TO OR DISCLOSURE OF CUSTOMER CONTENT WILL NOT EXCEED THE GREATER OF SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000) OR THREE TIMES (3X) THE FEES PAID BY CUSTOMER TO SMARTSHEET UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE.”

2. **Section 11.2 – Indemnification.** Section 11.2 of the Agreement shall be deleted in its entirety and replaced with the following:

“To the extent permitted by applicable law, Customer will defend Smartsheet and Smartsheet’s Affiliates providing the Services, and their respective officers, directors, and employees (“Smartsheet Indemnified Parties”) from and against any claims, demands, proceedings, investigations, or suits, brought by a third party (i) caused by Customer Content unless and to the extent the Claim Against Smartsheet arises from Smartsheet’s willful misconduct, active negligence, or use of Customer Content other than as authorized under this Agreement, or (ii) arising out of Customer’s use of the Services or Customizations in violation of applicable law (each, a “Claim Against Smartsheet”). Customer will indemnify Smartsheet Indemnified Parties for any finally awarded damages or settlement amount approved by Customer in writing to the extent arising from a Claim Against Smartsheet, and any reasonable attorneys’ fees of Smartsheet associated with initially responding to a Claim Against Smartsheet.”

Except as otherwise provided herein, all other terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict between this Amendment and the Agreement, this Amendment shall prevail.

IN WITNESS WHEREOF, this Amendment is hereby executed by an authorized representative of each party hereto as of the date indicated above.



SMARTSHEET INC.

By: DocuSigned by:
Andrew Bennett
B18356E2919A46C

Name: Andrew Bennett

Title: SVP of Commercial Sales

Date: 8/12/2021 | 9:53 AM PDT

COUNTY OF SANTA BARBARA

By: DocuSigned by:
Andre Monostori
C15BA3D8E632423...

Name: Andre Monostori

Title: Interim Assistant Director - ICT

Date: 8/12/2021 | 12:15 PM PDT



HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement (“**BAA**”) is entered into by and between Smartsheet Inc., with its principal place of business located at 10500 NE 8th Street, Suite 1300, Bellevue WA 98004 (“**Smartsheet**”), and the undersigned customer (“**Customer**”). This BAA is effective on the date it is executed by Smartsheet (the “**BAA Effective Date**”).

1. Applicability. This BAA is subject to the terms of the Subscription Agreement (defined below). In the event of a conflict between the Subscription Agreement and this BAA, the BAA will control. A breach of this BAA by either party constitutes a material breach of the Subscription Agreement. Customer is obligated to notify Smartsheet if Customer downgrades its Subscription Service from an Enterprise level plan, and accordingly is no longer authorized to upload or submit PHI to the Subscription Service.

2. Definitions. For the purposes of this BAA, any capitalized terms not defined herein will have the meaning given to them in the Subscription Agreement. The following terms shall have the meanings as defined in HIPAA: “**Breach**”; “**Security Incident**”; “**Protected Health Information (PHI)**”, “**Required By Law**”; and “**Individual**”.

“**Business Associate**” has the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this BAA shall mean Smartsheet.

“**CFR**” means the U.S. Code of Federal Regulations.

“**Covered Entity**” has the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this BAA shall mean Customer.

“**Customer Content**” means data, information, file attachments, text, images, reports, and other content that is uploaded or submitted to the Subscription Service by Customer or Customer Users and processed in the Subscription Service.

“**Customer PHI**” means PHI contained within Customer Content.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 and the rules and the regulations thereunder, as amended (including with respect to the HITECH Act).

“**HIPAA Implementation Guide**” means the informational guide made available by Smartsheet, at www.smartsheet.com/HIPAA-Implementation-Guide describing how Customer can configure and use the Subscription Service consistent with Customer’s obligations under HIPAA.

“**HIPAA Rules**” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

“**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act enacted in the United States Congress, which is Title XIII of Division A and Title IV of Division B of the American Recovery & Reinvestment Act of 2009 (“**ARRA**”), and the regulations thereunder, as amended.

“**Independent Contractor**” means a non-employee worker who performs services on behalf of Smartsheet subject to Smartsheet’s privacy and security policies.

“**Secretary**” means the Secretary of the U.S. Department of Health and Human Services.

“**Security Rule**” means 45 CFR Part 160 and Subparts A and C of Part 164.

“**Subcontractor**” means any person (including any third party, but excluding Independent Contractors of Smartsheet) appointed by or on behalf of Smartsheet to process Customer PHI in connection with the Subscription Agreement.

“**Subscription Agreement**” means the applicable agreement governing Customer’s access and use of the Subscription Service.

“**Subscription Service**” means Smartsheet’s internet-delivered work collaboration services and applications as such term is defined in the Subscription Agreement. For purposes of this BAA, Training Services, Free Services, and services and applications provided by third-parties, including Partner Apps, are not part of the Subscription Service and Customer is responsible for determining and implementing appropriate measures for the use of services and applications consistent with Customer’s obligations under HIPAA.

“**Unsecured PHI**” has the same meaning as the term “unsecured protected health information” at 45 CFR § 164.402.

3. Obligations of Smartsheet.

3.1 Smartsheet agrees to not use or disclose Customer PHI other than as permitted or required by this BAA or as Required by Law.

3.2 Smartsheet agrees to use appropriate safeguards to comply with the Security Rule with respect to Customer PHI, to prevent use or disclosure of Customer PHI other than as provided for by this BAA, and to reasonably and appropriately protect the confidentiality, integrity, and availability of the Customer PHI that it processes on behalf of Customer as required by the Security Rule.

3.3 Smartsheet agrees to mitigate, to the extent practicable, any harmful effects known to Smartsheet resulting from an unauthorized use or disclosure of Customer PHI by Smartsheet in violation of this BAA’s requirements.

3.4 Smartsheet agrees to the following Breach notification requirements:

a. In the event of a Breach, suspected Breach, or Security Incident involving Customer PHI (collectively referred to as a “**Reportable Incident**”) of which Smartsheet becomes aware, Smartsheet will provide notice to Customer of such Reportable Incident without undue delay, but in no case more than thirty (30) days following Smartsheet’s knowledge of such Reportable Incident. Notification will be (i) consistent with applicable law and the legitimate needs of law enforcement, and after taking any measures necessary to determine the scope of the Reportable Incident; and (ii) sent to Customer’s SysAdmin through the Subscription Service or via direct communication pursuant to the notification requirements in the Subscription Agreement.

b. Customer acknowledges that Smartsheet routinely experiences, without limitation, pings and other broadcast attacks on Smartsheet’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, that do not result in unauthorized access, use, disclosure, modification, or destruction of Customer Content, including Customer PHI, or interference with the general operation of Smartsheet’s systems or the Subscription Service (“**Unsuccessful Attempts**”). The parties acknowledge and agree that this Section 3.4(b) constitutes notice by Smartsheet to Customer of the ongoing existence and occurrence of Unsuccessful Attempts for which no additional notice to Customer shall be required.

3.5 Smartsheet will take appropriate measures to ensure that Subcontractors and Independent Contractors are bound by substantially the same restrictions, conditions, and requirements as Smartsheet under this BAA. To the

extent Smartsheet uses Subcontractors and Independent Contractors in its performance of obligations hereunder, Smartsheet will remain responsible for their performance as described in the Subscription Agreement.

3.6 Smartsheet will make Customer PHI in a Designated Record Set available to Customer in order for Customer to comply with its obligations with 45 CFR § 164.524, it being understood that Customer will be solely responsible for identifying the relevant Designated Record Set and PHI and for complying with any request made by individuals under 45 CFR § 164.524.

3.7 Smartsheet will make Customer PHI in a Designated Record Set available to Customer for amendment in order for Customer to comply with its obligations with 45 CFR § 164.526, it being understood that Customer will be solely responsible for identifying the relevant Designated Record Set and PHI and making any necessary amendments to comply with any request made by individuals under 45 CFR § 164.526.

3.8 Smartsheet will maintain and make available information necessary for Customer to provide an accounting of disclosures of Customer PHI in accordance with 45 CFR § 164.528, it being understood that Customer will be solely responsible for identifying the relevant individuals and associated PHI and for complying with any request made by individuals under 45 CFR § 164.528. Smartsheet is not responsible for providing an accounting of disclosures made by Customer while using the Services.

3.9 To the extent Required by Law, and subject to applicable attorney-client privileges, Smartsheet will make its internal practices, books, and records concerning the use and disclosure of Customer PHI received from Customer or created or received by Smartsheet on behalf of Customer, available to the Secretary for the purpose of the Secretary determining compliance with the HIPAA Rules.

4. Permitted Uses and Disclosures.

4.1 By Smartsheet: Smartsheet may use and disclose Customer PHI:

- a. to perform the services as specified in the Subscription Agreement;
- b. as Required by Law; and
- c. for the proper management and administration of Smartsheet's business and to carry out the legal responsibilities of Smartsheet, provided that any disclosure of Customer PHI for such purposes may only occur if (i) required by applicable law; or (ii) Smartsheet obtains reasonable written assurances from the person to whom Customer PHI will be disclosed that it will be held in confidence, used only for the purpose for which it was disclosed, and that Smartsheet will be notified in the event of an unauthorized disclosure.

4.2 Minimum Necessary. Smartsheet agrees to limit uses and disclosures of Customer PHI consistent with minimum necessary requirements under 45 CFR § 164.502(b).

4.3 Limitations. Smartsheet may not use or disclose Customer PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Customer.

5. Obligations of Customer.

5.1. Customer warrants that Customer, its directors, officers, subcontractors, employees, affiliates, agents, and representatives:

- a. will comply with HIPAA in its use or disclosure of Customer PHI;

- b. will not use or disclose Customer PHI in any manner that violates applicable federal and state laws;
- c. will not request that Smartsheet use or disclose Customer PHI in any manner that would violate applicable federal and state laws if such use or disclosure were done by Customer; and
- d. will not use the Subscription Service to create, receive, maintain or transmit PHI using a Connector or third-party application (including Partner Apps), except where Customer has expressly entered into separate HIPAA business associate agreement with said third-party service providers.

5.2 In connection with Customer's management and administration of the Subscription Service with respect to Customer Users, Customer is responsible for using the available controls within the Subscription Service to support its compliance with HIPAA, including reviewing the HIPAA Implementation Guide and enforcing appropriate controls.

5.3 Customer shall use measures and controls available within the Subscription Service to ensure: (a) that non-HIPAA compliant functionality is disabled for all Customer Users who use the Subscription Service in connection with Customer PHI; and (b) use of Customer PHI is appropriately limited to the minimum extent necessary for Customer to carry out its authorized use of such PHI, except as otherwise allowed by 45 CFR 164.502(b)(2).

5.4 Customer (and not Smartsheet) is responsible for: (a) managing whether Customer Users are authorized to create, receive, maintain, or transmit PHI within the Subscription Service; and (b) for sharing or distribution of PHI by Customer Users who are utilizing the sharing features within the Subscription Service. Smartsheet has no obligation to protect Customer PHI under this BAA to the extent such PHI is created, received, maintained, or transmitted outside of the Subscription Services.

5.5 Customer will notify Smartsheet of: (a) any limitation(s) in the notice of privacy practices under 45 CFR § 164.520, to the extent that such limitation may affect Smartsheet's use or disclosure of Customer PHI; (b) any changes in, or revocation of, the permission granted by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Smartsheet's use or disclosure of Customer PHI; and (c) any restriction on the use or disclosure of Customer PHI that Customer has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Smartsheet's use or disclosure of Customer PHI.

5.6 In the event that Customer's notice of privacy practices as described in Customer's patient privacy notification limits Smartsheet's ability to process Customer PHI as set forth herein or Customer agrees to or must abide by restrictions or any other limitations on such ability, Smartsheet shall be permitted to terminate the Subscription Agreement without penalty by giving Customer three (3) days written notice. Smartsheet may suspend or terminate Customer's use of the Subscription Service if it is made known to Smartsheet that Customer is not adequately making use of the features discussed in the HIPAA Implementation Guide. The provisions of this Section shall survive the termination of this BAA.

6. Term and Termination.

6.1 This BAA will terminate upon the earlier of: (a) a permitted termination as set forth herein; (b) the expiration or termination of the Subscription Agreement; or (c) the execution of a business associate agreement that supersedes this BAA. Upon termination of this BAA for any reason, Customer must immediately (x) delete or remove any Customer PHI from the Subscription Service, and (y) cease to create, receive, maintain, or transmit PHI via the Subscription Service.




6.2 Upon expiration or termination of the period of authorized access and use of the Subscription Service, Smartsheet will return, allow read-only access to or render unrecoverable Customer PHI, if any, according the terms and conditions of the applicable Subscription Agreement; provided that Smartsheet may retain Customer PHI

contained in an archived computer system backup made in accordance with the Smartsheet's legal and financial compliance obligations or security and disaster recovery procedure. Any such retained Customer PHI will remain subject to the terms of this BAA and the applicable Subscription Agreement.

7. **Entire Agreement.** This BAA constitutes the entire agreement between the parties related to the subject matter hereof. Except as expressly modified or amended under this BAA, the terms of the Subscription Agreement remain in full force and effect. This BAA may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provisions of this BAA, or any part thereof, is found to be invalid, the remaining provisions shall remain in effect. For the avoidance of doubt, except as otherwise expressly set forth herein, the terms and conditions with respect to the parties' limitations of liability and indemnification obligations are set forth in the Subscription Agreement.

8. **General.** The parties agree to take such action as is necessary to amend this BAA to comply with the requirements of the HIPAA Rules, HIPAA, the HITECH, and any other applicable law. The respective rights and obligations of Smartsheet under Section 6 of this BAA shall survive the termination of this BAA. Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the same laws as those governing the Subscription Agreement. Any reference in this BAA to a section in the HIPAA Rules shall mean the section as in effect or as amended.

IN WITNESS WHEREOF, the parties hereto have executed this BAA as of the date Smartsheet's signature below.

Santa Barbara County 	
Department of	
CUSTOMER: Behavioral Wellness	SMARTSHEET INC.:
By: 	By: 
Name: Lindsay Walter	Name: Jolene Marshall
Title: Deputy Director	Title: VP of Legal
Date: January 20, 2020	Date: 3/20/2020